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SEC

SERVICE DATE - SEPTEMBER 22, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-31 (Sub-No. 33)

GRAND TRUNK WESTERN RAILROAD INCORPORATED--ABANDONMENT--  
IN MACOMB AND OAKLAND COUNTIES, MI

MOTION FOR PROTECTIVE ORDER

Decided: September 18, 1998

By motion filed September 8, 1998, concurrently with its filing of its abandonment application in this proceeding, Grand Trunk Western Railroad Incorporated (GTW) seeks a protective order to safeguard the confidentiality of specified proprietary costing data and commercial information, including compensation rates and rental payment figures. GTW has filed both a confidential version of its entire application under seal and a redacted version for public inspection. It also has submitted a draft protective order and undertaking with its motion.

In support of its motion, GTW asserts that the subject data is commercially sensitive and that its disclosure to the public could be competitively damaging. GTW indicates, further, that it is under contractual obligation to keep its compensation rates and rental payment rates confidential. GTW avers, in addition, that public disclosure of the subject data is not required for disposition of its application.

GTW's motion conforms with the requirements of the Board's rule at 49 CFR 1104.14 governing requests for protective orders. Accordingly, GTW's request for a protective order will be granted.

It is ordered:

1. The motion for a protective order is granted, and the protective order and confidentially undertaking in the Appendix are adopted. The specified costing data and commercial information will be kept under seal and not placed in the public docket or otherwise disclosed to the public.

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2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, “Confidential Information” means the railroad-specific costing data, compensation rates, and rental payment information contained in (i) Exhibit WWW-3 to the Verified Statement of William W. Whitehurst, Jr., attached at Tab D to Grand Trunk Western Railroad Incorporated’s (“GTW”) Application for Abandonment Authority filed in STB Docket No. AB-31 (Sub-No. 33) on September 8, 1998 (the “Application”); and (ii) Exhibits JB-9, JB-9A, JB-13, JB-13A, JB-14, JB-14A, and JB-15 to the Verified Statement of John Brayley, attached at Tab F to the Application.

2. The Confidential Information shall be used for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or other competitive purpose.

3. The Confidential Information shall not be disclosed in any way or to any person without the written consent of GTW or an order of the Board, except: to outside counsel or consultants of parties to this proceeding, solely for use in connection with this and any related Board proceedings, or any judicial review proceeding arising therefrom, provided that such outside counsel or consultant has been given and has read a copy of this Protective Order, agrees to be bound by its terms by signing the attached Undertaking, and submits such Undertaking to GTW’s outside counsel prior to receiving access to the Confidential Information.

4. Any documents containing the Confidential Information must be destroyed, and notices of such destruction must be served on the Board at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.

5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the Confidential Information in accordance with the procedures set forth at 49 CFR 1104.14.

6. If any party intends to use the Confidential Information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with this Protective Order.

7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

I, \_\_\_\_\_, have read the Protective Order governing the filing of Confidential Information by GTW in STB Docket No. AB-31 (Sub-No. 33) and understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Docket No. AB-31 (Sub-No. 33) or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that GTW shall be entitled to specific performance and injunctive or other equitable relief as remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name:

Title:

Company: